Supreme Court, U.S.
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No. 01-1788

IN THE

Supreme Court of the United States

CHARLES DORSETT,

Petitioner,

v.

LOUISIANA TECH UNIVERSITY, RICHARD GREECHIE, BARRY KURTZ, BARRY BENEDICT, KENNETH REA, DANIEL RENEAU, LESLIE GUICE, EUGENE CALLENS, and RUTH ELLEN HANNA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Respondents submit that the issues for review are as follows:

1. Whether the Court of Appeals correctly affirmed the lower court's grant of respondents' motion for summary judgment.

2. Whether the Court of Appeals correctly determined that: (a) petitioner's First Amendment rights were not violated when he was denied merit raises, summer employment and assignment of overloads; (b) respondents did not defame plaintiff; and (c) respondents did not violate plaintiff's due process rights.

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INTRODUCTION

The Petitioner's Brief contains the same arguments as his Fifth Circuit brief and opposition to Respondents' Motion for Summary Judgment. His brief contains no arguments of law that would warrant a reversal of the rulings of the lower courts; thus, there is no compelling reason for this court to grant petitioner's writ. Petitioner, as pointed out in the rulings by both lower courts, (*see* Report and Recommendation rendered September 4, 2001, Appendix C[1] at 6 and Appeal Ruling filed February 28, 2002, Appendix A at 2) raises his misconception of Respondents' misconduct without submitting supporting documentation or evidence other than his one-sided allegations. Petitioner's arguments are filled with allegations, misunderstandings and misstatements of fact, most of which have no bearing on the underlying ruling of the courts. The lower courts have rejected petitioner's arguments as devoid of any law that could justify finding in petitioner's favor. The rulings of the lower courts are correct and therefore this writ should be denied.

STATEMENT OF THE CASE

Plaintiff, Charles Dorsett, is a longtime employee of Louisiana Tech University ("Tech"), having been tenured on September 1, 1984. In 1990, he was promoted from Associate Professor to Professor of Mathematics and Statistics; he remains in that position today. Due to letters of reprimands and/or Dr. Dorsett's poor overall performance evaluations, he did not receive merit raises for the academic years 1996-1997, 1998-1999 and 1999-2000. Further, due to his lack of merit raises and other perceived injustices, Dr. Dorsett filed

1. All references by Respondents in their Opposition Brief will be to those contained in the Petitioner's Appendix.

several grievances within Tech's grievance procedures. Furthermore, Dr. Dorsett claims that he was denied overload assignments. Yet, he has never had overload assignments while employed at Tech. Lastly, Dorsett claims he was denied summer employment. It is not disputed that the only "deprivations" suffered by Dr. Dorsett are the lack of merit raises, lack of summer employment and lack of overload assignments.

This is the second suit filed by Dr. Dorsett against Tech. His previous case was likewise dismissed in the summary judgment stage and affirmed by the Fifth Circuit.[2] There, Dorsett alleged that respondents harassed him in retaliation for his exercise of free speech rights pursuant to the First Amendment. This case, like his previous case, should be dismissed. In his arguments, Dr. Dorsett fails to address the relevant legal issues, and instead makes unsubstantiated allegations against the respondents. Dr. Dorsett submitted no affidavits or deposition testimony to support his many allegations. There is only his unilateral account of events.

With regard to his many grievances, respondents do not dispute that he was not given a formal hearing in his grievances. However, he was given an opportunity to respond at every level of the process. Additionally, Tech followed its own procedures for the grievance process, although Dr. Dorsett claims otherwise.

Lastly, with regard to Dr. Dorsett's defamation claim, he claims that he was defamed with negative evaluations, letters of reprimand and responses to his grievances. He also alleges that Reneau defamed him when stating that AAUP

2. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121 (5th Cir. 1991).

members were "troublemakers" in a statement given to the NewsStar newspaper. The argument below will show that plaintiff did not meet his burden of proving defamation under Louisiana law.

Thus, based on the above allegations, Dr. Charles Dorsett filed this action on February 3, 1998 claiming due process violations and defamation. On July 2, 1999, Dr. Dorsett amended his complaint adding First Amendment violations and adding additional Fourth and Fifteenth Amendment due process violations. Lastly, on September 22, 2000, Dr. Dorsett amended his complaint again adding additional alleged violations. In short, Dr. Dorsett alleges that Tech and the respondents took certain adverse actions against him for his speaking out on matters of public concern against Tech and its President, Reneau.

Respondents filed a timely[3] Motion for Summary Judgment on July 9, 2001 arguing that: (1) the alleged damages suffered by Dr. Dorsett (i.e., lack of merit raises, summer employment or overload assignments) did not rise to the level of constitutional deprivation; (2) even if they did rise to the level of constitutional deprivation, Dr. Dorsett was not speaking out on matters of public concern; (3) at all times, Dr. Dorsett was speaking out as an employee, not a private citizen; (4) Dr. Dorsett was not defamed; and (5) defendant did not violate Dr. Dorsett's Fourth or Fifteenth Amendment due process rights.

3. Respondents filed their Motion for Summary Judgment on July 9, 2001, the day all dispositive motions were due. Although the letter to the clerk for filing was addressed to the Shreveport office, the motion was properly filed in the Monroe Federal Clerk's office, all of which is adequately reflected in the court's records. This is further evident in Volume 1 in the Record on Appeal. The Docket shows that on July 9, 2001, the court received the Motion, although not technically "filed" until the Court ruled on the Motion to Exceed the page limits.

The Magistrate Judge issued a Report and Recommendation on September 4, 2001 recommending that the motion be granted, correctly holding that Dr. Dorsett had not suffered a constitutional deprivation, had not been defamed and was not denied due process. (*See* Report and Recommendations, Appendix C) Judgment was subsequently rendered on September 25, 2001 after a *de novo* review of the record, dismissing Dr. Dorsett's suit. (*See* Judgment, Appendix B) Thereafter, Dr. Dorsett appealed to the Fifth Circuit Court of Appeals. That court affirmed the District Court's ruling on February 28, 2002. (*See* Appeal Ruling, Appendeix C) The following argument will show that the granting of summary judgment was proper, and that this Court should deny the request for writ of certiorari.

SUMMARY OF THE ARGUMENT

1. Dr. Dorsett suffered no constitutional deprivation by being denied merit raises, summer employment and overload assignments. Therefore, the lower courts were correct in not considering the issue of whether or not he was speaking on issues of public concern.

2. Dr. Dorsett was not deprived of due process for lack of a grievance hearing. He had ample opportunity to be heard in the grievance process. No actual hearing is required in order for the defendant to comply with due process requirements.

3. There was no defamation against Dr. Dorsett.

ARGUMENT

Rule 10 of the Supreme Court Rules is very clear when stating that a "petition for a writ of certiorari will be granted only for compelling reasons." There is simply no compelling reason for this court to review this matter.

I. Standard of Review

The standard of review in the granting of summary judgments is the same standard used by the district court. "To support summary judgment, the evidence, including affidavits, depositions, answers to interrogatories, and admissions on files, must demonstrate that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Under this standard, we consider the evidence in the light most favorable to the party resisting the motion. We review questions of law *de novo*."[4]

Once the respondents supported their motion for summary judgment sufficiently, Dr. Dorsett must have established a genuine issue of material fact. This cannot be accomplished by resting on his pleadings alone.[5] Further, he will not establish a genuine issue of fact by asserting unsubstantiated allegations of fact or providing fact that he can not prove at trial.[6] The following will clearly show this court that Dr. Dorsett could not prevail at trial.

4. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121, 123 (5th Cir. 1991), citations omitted; Fed. R. Civ. P. 56(c).

5. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

6. *Krim v. Banctexas Group, Inc.*, 989 F.2d 1435 (5th Cir. 1993); *Geiserman v. MacDonald*, 893 F.2d 787 (5th Cir. 1990).

II. Dr. Dorsett's First Amendment Constitutional Rights Were Not Violated

In order for Dorsett to succeed on his First Amendment violation claim, he must first prove that the alleged harm he suffered rises to the level of a Constitutional deprivation.[7] It does not. The Fifth Circuit court held in Dorsett's previous suit that administrative matters such as teaching assignments and pay increases did not rise to the level of a constitutional deprivation.[8] Therein, the Fifth Circuit court stated:

> We have neither the competency nor the resources to undertake to micromanage the administration of thousands of state educational institutions. Of all fields that the federal courts should hesitate to invade and take over, education and faculty appointments at [the university] level are probably the least suited for federal court supervision.[9]

As previously stated, Dr. Dorsett still enjoys his position at Tech, not having been fired or demoted. He has been "denied" raises, summer employment and overloads. However, Dorsett has no constitutional right to raises, summer employment or overloads; thus, there have been no constitutional deprivations.[10]

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7. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121 (5th Cir. 1991).

8. *Id.*

9. *Id.* at 124.

10. *Supra* at note 7.

The Fifth Circuit decided this very issue in Dorsett's previous suit where he claimed that he was unfairly denied summer employment and raises. That court stated:

> The continuing retaliatory actions alleged by Dorsett appear to be nothing more than decisions concerning teaching assignments, pay increases, administrative matters and departmental procedures. We recognize that such decisions might seem extremely significant to Dorsett, who has devoted his life to teaching. But we believe, nevertheless, that the alleged harms suffered by Dorsett do not rise to the level of a constitutional deprivation.[11]

The same is true here; there has been no constitutional deprivation. Dr. Dorsett is confused as to what constitutes a "constitutional deprivation." He may have a property right in his employment, but he has no property right in raises, summer employment, positive evaluations or overload assignments.

Since Dr. Dorsett has failed to meet his first burden of proving a constitutional deprivation, we do not even reach the question of whether he was speaking out on matters of public concern as a private citizen or as an employee. However, the "public concern" issue is what Dorsett's writ application seems to focus. Even if the court would have determined that Dorsett did suffer a constitutional deprivation, a review of his Briefs and opposition to the Motion for Summary Judgment shows that the matters of concern are motivated by a bitter employee who did not receive a pay raise.

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11. *Id.* at 123.

Additionally, Dorsett would have to show that the protected speech was a substantial or motivating factor in the adverse employment decision.[12] However, due to the many letters of reprimand and poor overall performance, the respondents would have reached the same decision absent the alleged protected conduct. Thus, Dr. Dorsett's First Amendment claim fails.

III. Dr. Dorsett Was Not Denied Due Process Under The Fifth or Fourteenth Amendments

Dr. Dorsett has several due process claims. He claims that the evaluation process used did not follow the Tech Handbook; that a "secret" personnel file was denied him and then used in his evaluation; that he was denied a timely grievance process and formal hearing; and that respondents abandoned their criteria for determining his merit raise.

Dr. Dorsett, as a tenured professor, enjoys one fundamental property right, and that is continued employment.[13] If this fundamental right was to be taken away, he would have to be afforded notice and the opportunity to be heard. However, this is not at issue. As stated, Dr. Dorsett enjoys his same position, not having been demoted or decreased in salary. Dr. Dorsett does not have a property right to raises, summer employment or overload assignments.[14] Furthermore, he does not have a due process claim for Tech's alleged failure to follow their own Handbook in giving raises or evaluating him.

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12. *O'Connor v. Steeves*, 994 F.2d 905, 912 (1st Cir. 1993).

13. U.S.C.A. Const. Amend. 14; *de Llano v. Berglund*, 142 F. Supp. 2d 1165 (D.N.D. Mar 19, 2001).

14. *Dorsett v. Board of Trustees for State Colleges and Universities*, 940 F.2d 121 (5th Cir. 1991).

Furthermore, Dorsett's claim that he was denied due process in his grievances fails. He had all opportunities to be heard in the grievance process, with opportunities to respond to all allegations. Additionally, Dorsett admits to receiving copies of all letters of reprimands and evaluations, thus he had an opportunity to respond. The denial of a formal hearing within the grievance process is not a constitutional violation of due process. It is only essential that he has an opportunity to present his side of the story.[15] Dorsett was afforded this and was not denied due process.

IV. Dr. Dorsett Was Not Defamed

Dr. Dorsett claims that he was defamed in the letters of reprimand and negative evaluation, by defendant Reneau who allegedly defamed him in a NewsStar article, and by defendant Hanna who implied he was a liar. In order to prove defamation, Dr. Dorsett must prove: (1) a false and defamatory statement; (2) published to a third party; (3) fault (actual or implied malice) on the part of the publisher; and (4) resulting injury.[16] Dr. Dorsett has failed to prove these elements.

He has failed to prove publication for the allegations of defamation resulting from the letters of reprimand or negative evaluations. Louisiana law is clear that "statements between employees, made within the course and scope of their employment, are not statements communicated or publicized to third persons so as to constitute a publication for defamation

15. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985).

16. *McConathy v. Ungar*, 33,368 (La. App. 2 Cir. 8/23/00); 765 So. 2d 1214, La. C.C. Art. 2315.

purposes."[17] Further, an employer will have a qualified or conditional privilege where statements are made in good faith and reasonably thought to be true on a subject matter in which the employer has an interest.[18] Certainly, Tech, as the employer of Dorsett, has interest in all employment matters, including reprimands and grievances. Herein, all of the actions alleged to have defamed Dorsett (i.e., the letters of reprimand and the grievance responses) were based on matters of interest to the employer and made in good faith. Additionally, these letters and evaluations were placed in Dorsett's file; there was no publication. Lastly, he has not proved falsity of the statements.

With regard to the alleged defamatory comments by Reneau to the NewsStar, Dorsett admits that Reneau did not name any names. A review of the only documentation provided by Dr. Dorsett to prove this allegation is a September 26, 1996 article wherein Dorsett and others accuse Reneau of misallocation of funds for raises. The NewsStar quoted Reneau as saying that he did "not intend to get into a war of words with these people. I've been through this with them for years, even to defending lawsuits." This statement in no way can be construed as defamation of Dorsett. Reneau simply declined to comment. No other article has ever been produced by Dorsett.

Lastly, Dorsett claims that the defendant, Hanna defamed him by implying he was a liar when she denied placing mail in his mailbox without his permission. Such a statement can

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17. *Bell v. Rogers*, 29,757, 10 (La. App. 2 Cir. 8/20/97), 698 So. 2d 749, 756.

18. *Heinz v. Arkansas Louisiana Gas Company*, 613 So. 2d 646 (2d Cir. 1993), *cert. denied*, May 14, 1993.

not be construed as defamation no matter how far stretched. She simply denied an action. Furthermore, even if she called him a liar, there is no evidence of publication. Thus, all the alleged statements of defamation cannot support Dr. Dorsett's claim since there is no proof of publication or falsity.

CONCLUSION

For the forgoing reasons, the United States Fifth Circuit Court of Appeals correctly affirmed the district court's granting of respondents' motion for summary judgment. Accordingly, the petitioner's writ should be denied.

Respectfully submitted,

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